



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/148708

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 11, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 08, 2013, at Milwaukee, Wisconsin.

There is no issue ready for resolution by the Division of Hearings and Appeals at this time.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Lucy Miller, Nurse Consultant on behalf of  
Division of Health Care Access And Accountability  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is assigned to an HMO – United Health.
3. A request for personal care worker services was filed with the Medicaid program on behalf of Petitioner in the fall of 2012 by Deaconess Home Health. It sought 5.5 hours of care 7 days per week.
4. The request noted at Finding # 2 was denied. There were conflicting evaluations of Petitioner's condition submitted to the Medicaid program. One, by Deaconess Home Health, indicated that Petitioner needed help with most of her ADLs, hence the 5.5 hour per day request. Another, by United Health, indicated that Petitioner was independent in her ADLs.

5. To further complicate this matter, Deaconess is no longer in operation.

### **DISCUSSION**

Under the discretion allowed by *Wis. Stat.*, §49.45(9), the Department of Health Services (DHS) requires MA recipients to participate in HMOs. *Wis. Admin. Code*, § DHS 104.05(2)(a). Medicaid recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code*, § DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHS are the same as the general Medicaid criteria. See *Wis. Admin. Code*, § DHS 104.05(3) which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The Department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code*, § DHS 104.05(1). When determining whether to approve any service, the HMO, as with the Department, must consider the generic prior authorization review criteria listed at *Wis. Admin. Code*, § DHS 107.02(3)(e). The Medicaid program may only reimburse providers or medically necessary and appropriate health care services and equipment listed in *Wis. Stat.* §§ 49.46(2) and 49.47(6)(a), as implemented by *Wis. Admin. Code*, Ch. DHS 107. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered.

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals.

There are a number of problems with this case, none caused by Petitioner, that do not make it feasible to approve the requested personal-care services at this time. The request itself was made by Deaconess Home Health which is longer in business. An evaluation of Petitioner by the HMO involved here, UnitedHealth, concluded that Petitioner is completely independent activities of daily living. Petitioner has checked with another home health care agency in the wake of the closure of Deaconess but they were not able to help her because they do not work with UnitedHealth. Per the ForwardHealth/Medicaid representative involved in the hearing, quite a number of home health care agencies in Milwaukee County declined to work with the HMOs so the Department of Health Services does have a form which permits a person to request a waiver from the requirement that they be enrolled in an HMO. Petitioner was not aware of that waiver potential. Additionally, some of the assistance sought by Petitioner might also be available via the Family Care Program. Petitioner has not yet had an opportunity to explore that program. Petitioner has, however, been in contact with Disability Rights of Wisconsin and that agency advised Petitioner that, given all the circumstances just outlined, it might be best to start the process over. With Petitioner's permission I contacted the Disability Rights of Wisconsin staff member who she was working with to brief her on the hearing. The representative from Disability Rights has, and will continue, to work with Petitioner to start the process over. While the testimony of Petitioner suggests that she does need some assistance, the Division of Hearings and Appeals is not in a position to perform an evaluation and determine how much assistance she needs or whether or not any of that assistance might be via durable medical equipment. I am, therefore, dismissing this appeal. All of the above was explained during the course of the hearing. Petitioner may, however, file another appeal if she if she applies for personal care services and is again denied.

**CONCLUSIONS OF LAW**

That a number of circumstances, primarily the closure of the agency seeking personal care services for Petitioner, lead to the conclusion that that Division of Hearings and Appeals cannot approve personal care services requested by that agency.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

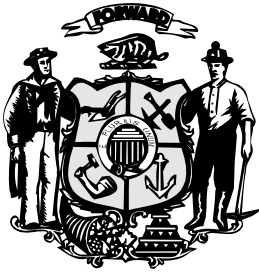
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of July, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 25, 2013.

Division of Health Care Access And Accountability